LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
SEP 23 19[illegible]
E. ROBERT SEAVER, CLERK

No. 71-261

In the Supreme Court of the United States

OCTOBER TERM, 1971

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, AFL-CIO, ET AL., PETITIONERS

v.

HARRAH'S CLUB, INC. and NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

PETER G. NASH,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-261

AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA, AFL-CIO, ET AL., PETITIONERS

v.

HARRAH'S CLUB, INC. and NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

In March 1968, the "house" musicians employed by a group of casinos in Reno, Nevada, who were represented by a local of petitioner American Federation of Musicians (AFM), struck and established picket lines in front of the casinos. The AFM—by telegrams and other written notices—advised its members not to perform at the struck casinos, and

warned that they were subject to disciplinary action if they did. In support of the AFM strike, petitioner American Guild of Variety Artists (AGVA) sent similar notices and warnings to its members. Members of both unions worked at the casinos as entertainers. The Board found that the unions' action constituted permissible primary activity and dismissed the complaints alleging that the unions had violated Section 8(b)(4)(B) of the National Labor Relations Act (29 U.S.C. 158(b)(4)(B)). (Pet. App. 18a-38a, 39a-52a.) The Board found that the work of the entertainers was "inextricably involved with and necessary to the normal operations of the casinos," and that, in inducing its members to honor the picket lines at the casinos, the unions had "appealed for and induced action only at the situs of the [primary] dispute" (Pet. App. 21a-22a).

The court of appeals reversed the Board. The court held that the unions had threatened, coerced, and restrained the entertainers, who were secondary employers, in order to force them to cease doing business with the casinos, and thus had engaged in conduct proscribed by the "plain language" of Section 8(b)(4)(B) (Pet. App. 13a, 16a).[1] Nor, in the court's view, was this conduct saved by the proviso to that section privileging "any primary strike or primary picketing." The court stated: "The complaint here is addressed to the lawfulness of coercion of employers directly by sending threatening tele-

[1] The court also held that AFM had unlawfully restrained the employees of one of the entertainers (Pet. App. 17a).

grams to them. No question is raised about the mechanics of the primary picketing" (Pet. App. 15a-16a).

For the reasons set forth in its Decision and Order (Pet. App. 18a-28a), the Board believes that the court of appeals erred in concluding that the unions' conduct violated Section 8(b)(4)(B) of the Act. The Board did not file a petition for a writ of certiorari, however, because it was the judgment of the Solicitor General that, since labor-management relations in the entertainment industry are somewhat unique, the present case presents an inappropriate vehicle for seeking further clarification of the difficult line between lawful primary, and unlawful secondary, activity. Although the Board believes that the petition for a writ of certiorari should be granted, it is the position of the Solicitor General that it should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 444552 196